

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

WILLIAM D. PEDERSEN,

Defendant-Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

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REPLY BRIEF FOR PLAINTIFF-APPELLANT

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No. 20,929

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In our main brief we demonstrated that the record in this case clearly established the erroneous payment to appellee of severance pay upon his involuntary release from active duty to a reserve status and the Government's entitlement to recover a money judgment against him.

1. Appellee suggests that he did not receive the entire \$10,065 overpayment claimed by the Government since

\$2,624.10 was withheld for federal income taxes (Brief, pp. 5-6). But that suggestion goes to the amount of the judgment due the Government, and could not justify the district court's denial of any recovery to the Government.<sup>1/</sup>

Appellee also attempts to make much of the fact that the orders releasing him from active duty introduced by the Government do not include a certificate signed by him indicating his understanding that he was not entitled to disability severance pay and indicating his election to receive readjustment pay (Brief, pp. 6-7). But of what importance is the absence of this certificate when the Government has established by other competent, uncontradicted evidence in the record (see our main brief pp. 15-16) that appellee was not entitled to disability severance pay but only to the lesser readjustment pay? And of what real relevance to the issue of the Government's entitlement to recover the overpayment are the facts that on one page of appellee's medical record he is erroneously referred to as a master sergeant, when that record clearly pertains to him,<sup>2/</sup> and that

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<sup>1/</sup> Appellee fails to note that on his 1958 Federal income tax return, he did not report the \$10,065 as income (Pl. Ex. 4).

How the money withheld as tax on this sum was handled by the Internal Revenue Service is not shown by the record. But if it was not refunded or applied against any other federal income tax indebtedness which appellee might have had, this withholding may be provided for in the money judgment which, we submit, the district court is required to make as a result of the overpayment.

<sup>2/</sup> There is no doubt that the report of medical examination containing the reference to appellee's rank as that of master sergeant was in fact the prerelease medical report on appellee. (Footnote continued)



his release from active duty physical examination was administered five days rather than three days before his actual release?

If anything, these errors show that the Government officials preparing appellee's records were less than infallible, and fortify the overwhelming evidence to the effect that they erred in giving him a check for severance pay, when in fact he was not being severed from the service, but was simply being released from active duty to reserve duty.

2. Appellee, in a final effort to avoid repayment to the Government of the money erroneously disbursed to him, insists, as he did in the district court, that because he was paid severance pay and because that severance pay was correctly calculated on the face of his pay record, (considering his years of service and final monthly active duty base pay), the Secretary of the Navy presumptively determined his entitlement to disability severance pay as Title 10, Section 1203 of the United States Code requires (Brief, pp. 10-11). But assuming, without conceding that such a presumption arises from an entry, regular on its face, in a service man's pay record, any such presumption was rebutted here by the medical evidence establishing appellee's fitness for continued active duty and lack of disability at the time of his involuntary release, and by the documentary evidence showing that he was not being severed from the

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2/ Footnote continued:

On the same page as the reference to the master sergeant rank appears appellee's correct service number and date of birth (Pl. Ex. 12).

service, but was simply being released from active duty to a reserve status for want of a billet in the active Marine Corps. The authorities cited by appellee in support of his position (Brief, pp. 10-11) are plainly inapposite since in none of them was evidence introduced rebutting the presumption of regularity which may have arisen.

#### CONCLUSION

For the reasons stated herein and in our main brief, it is respectfully submitted that the judgment of the district court should be reversed and the cause remanded to the district court with directions to enter judgment for the United States.

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OCTOBER, 1966.

CERTIFICATE OF COMPLIANCE

I hereby certify that, in connection with the preparation of this reply brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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